

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11612 OF 2015

1. Ramesh Ashok Kshirsagar,
Age : 26 years, Occu.: Service,
R/o.: Dhondrai, Taluka Gevrai,
District Beed
2. Bharat Gorakh Nagare,
Age : 32 years, Occu.: Service,
R/o.: Nagare Vasti, Sangam Jalgaon,
Taluka Gevrai, District Beed
3. Amol Tanhaji Dhakane,
Age : 28 years, Occu.: Service,
R/o.: Dhok Vadgaon, Taluka Gevrai,
District Beed
4. Parmeshwawr Baban Waghmode,
Age : 27 years, Occu.: Service,
R/o.: Talnewadi, Taluka Gevrai,
District Beed
5. Rahul Tukaram Jawale,
Age : 26 years, Occu.: Service,
R/o.: Prakash Ambedkar Nagar,
Imampur Road, Barshi Naka,
Beed
6. Sachin Maruti Bargaje,
Age : 28 years, Occu.: Service,
R/o.: Dhok Vadgaon, Taluka Gevrai,
District Beed
7. Kalpana Rahenja Pawara,
Age : 28 years, Occu.: Service,
R/o.: Umrani, Post Dhagaon,
Taluka Dhadgaon,
District Nandurbar

.. PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Primary Education,
Mantralaya, Mumbai
2. The Education Officer (Primary),
Zilla Parishad,
Beed
3. Bhagwan Shikshan Prasarak Mandal,
Gevrai, Through its President,
Shri Narayan Shrimantrao Munde,
Bhagwan Nagar, Gevrai,
Taluka Gevrai, District Beed
4. Mahatma Phule Primary School,
Bhagwan Nagar, Gevrai,
Taluka Gevrai, District Beed
Through its Head Master

..RESPONDENTS

WITH

**CIVIL APPLICATION NO. 3176 OF 2016
(Khandu Tatyaba Niware Vs. Ramesh Ashok Kshirsagar and
others)**

Mr. Santosh S. Jadhavar, Advocate holding for
Mr. Suhas R. Shirsat, Advocate for the Petitioners
Mr. P.S.Patil, A.G.P. for the respondent/State
Smt.Ashwini S. Hoke Patil, Advocate for respondent No.2
Mr. P.G. Tambade, Advocate for respondent No.3
Mr. R.D. Biradar, Advocate for applicant in Civil
Application No.3176/2016

**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

DATE : 16th MARCH, 2017

ORAL ORDER :

Heard.

2. Mr.S.S. Jadhavar, the learned counsel appearing for the petitioners, submits that initially, the petitioners were appointed on temporary basis. Thereafter, on 15th June, 2012, they were appointed on probation. They completed the probation period and on completion of probation period, as per the provisions of Section 5 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, their appointments would be confirmed as deemed permanent employees.

3. According to the learned counsel for the petitioners, the proposal seeking approval to the appointment of the petitioners on probation was submitted. The approval was granted. Thereafter, on 1st December, 2014, the proposal was submitted seeking approval to the confirmation of the petitioners' services. The same is not yet decided. The learned counsel submits that the order, filed alongwith the second affidavit-in-reply of the Education Officer

stating that the approval granted to the petitioners on probation has been cancelled, was never served upon the petitioners nor the petitioners were given any notice about it.

4. The learned counsel appearing for the Education Officer submits that the services of the petitioners are terminated. The approval granted to the petitioners' appointment on probation is also cancelled.

5. Mr. R.D. Biradar, the learned counsel for the intervenor submits that the intervenor is the Secretary of the Institution. The appointment letters issued in favour of the petitioners are not issued by the Secretary. Those are illegal.

6. It is the cardinal and fundamental principle of jurisprudence that when any adverse order is to be passed, hearing is required to be given to such person. It is not disputed that approval was granted to the appointment of the petitioners on probation. The same is said to have been cancelled as per the affidavit-in-reply of the Education Officer subsequently. It is also not disputed that before passing such order, no hearing

was given to the petitioners, nor a notice was issued to the petitioners in that regard. The Authority ought to have given notice to the petitioners before passing any orders cancelling approval. Such an order cannot be sustained.

7. As far as the proposal forwarded on 1st December, 2014 (Exhibit-F to the writ petition) is concerned, no orders are passed on the said proposal. Considering all the above aspects of the matter, we pass the following order:-

8. The Education Officer shall pass the orders on the proposal submitted regarding approval to the appointment of the petitioners as Assistant Teachers (Exhibit-F) on its own merits after hearing all the parties concerned expeditiously and preferably within four months. The order cancelling approval granted to the appointment of the petitioners on probation is hereby quashed and set aside and the said aspect shall be considered by the Authority after hearing the parties concerned. In that regard, all the contentions of the respective parties are kept open.

9. With the above directions and observations, the Writ Petition is disposed of. No costs.

10. In view of disposal of the Writ Petition, Civil Application No. 3176/2016 stands disposed of.

[SANGITRAO S. PATIL]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

npj/wp11612-2015